



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/02371/2014

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 10 March 2015**

**Decision and Reasons Promulgated
On 25 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Smith counsel instructed by GMIAU

For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. An order was made before the First-tier Tribunal and I am satisfied that it should continue.
2. The Appellant, a national of Mongolia was born on 6 April 1970. The Appellant appealed against the decision of the Secretary of State dated 27 March 2014 to refuse to grant an application for asylum and to remove her from the United Kingdom.

First-tier Tribunal Judge De Haney dismissed the appeal and the Appellant now appeals with permission to this Tribunal.

3. The background to this appeal is that the Appellant entered the United Kingdom on 27 August 2005 as a student having left her [children] in the care of her husband and mother. The Appellant's husband joined her in the United Kingdom in July 2006 and she changed the basis of her stay to that of dependent spouse. In December 2010 the Appellant's husband returned to Mongolia and on 23 February 2011 the Appellant claimed asylum with her three children as dependents. The Appellant claimed that she could not return to Mongolia because her husband would kill her and her three children.
4. The Respondent refused the application because by reference to the background material in relation to victims of domestic violence there is a fully functioning police force in Mongolia who would help the Appellant if she had problems with her husband as they had in the past and if dissatisfied with their response the Appellant could take the matter to a higher authority; relocation was also an option for the Appellant.
5. The First-tier Tribunal Judge heard oral evidence from the Appellant and had before him a bundle of documents from the Respondent and a 117 page bundle from the Appellant whose contents he set out in detail at paragraph 8 of his decision. The Judge took these documents into account and specifically noted those passages identified by the advocates as being directly relevant to the Appellant's case.
6. The claim was that the Appellant was a teacher in Mongolia who married in 1996 and he adopted her daughter. The Appellant was subjected to domestic violence from 1997 and she left her husband to live with her grandfather. Her husband found her and apologised for his behaviour and they reconciled returning to live in Ulaan Bataar. The Appellant studied for a postgraduate degree in Russia and had a second child in 2001. After returning to Mongolia the Appellant was hospitalised in November 2002 after being beaten by her husband. The police attended her at hospital. Her husband was arrested and detained overnight and was fined by the police. The violence stopped for 2-3 months but the Appellant did not report the matter to the police for fear of making matters worse. The Appellant came to the United Kingdom as a student in 2005 leaving her children with her husband and mother. In 2006 her husband joined her in the United Kingdom as a student and the Appellant became his dependent spouse. They were joined by their children in 2007. A third child was born in 2008. The Appellant was assaulted by her husband in February 2010 and in September 2010 one of the children phoned the police following an incident of domestic violence and a restraining order was made against him and he was also made the subject of a Community Order. They separated and on 26 December 2010 her husband returned to Mongolia. On 23 February 2011 the Appellant claimed asylum with her 3 children as dependents. She claimed that she feared that if she returned her husband would kill her and her children
7. The Judge concluded that the issues before him were whether the Appellant would face persecution for a Convention reason if returned to Mongolia; if so would there be a sufficiency of protection or alternatively could she relocate. The Judge accepted that the Appellant had in the past been the victim of domestic violence. He found that the law in Mongolia provides protection for women. He acknowledged that the argument advanced by Ms Smith who also appeared in the lower court and the

expert witnesses was that the protection provided was inadequate. He found that the background material stated that the sufficiency of protection was not equally available to all women but that the Appellant was well educated, forceful and able to access what was available. He found that her claimed fear that her husband would harm her children was inconsistent with her actions in that she had studied in Russia and the United Kingdom leaving her children in the care of her husband. He found that the only time the Appellant reported her husband's behaviour to the police they took action and that since then she did not report him to the police or seek to separate from him. The Appellant had not initiated divorce proceedings since she came to the United Kingdom. He found that the Appellant was more concerned about remaining in the United Kingdom as it was in hers and the children's best interests educationally and socially rather than through fear of persecution. He found that there was sufficiency of protection and she could, if she chose to, internally relocate. He found that her failure to divorce her husband added weight to the concern that they would reconcile again as they had in the past.

8. At the hearing before me Ms Smith sought to argue that the Judge had failed to properly engage with the background material provided and gave inadequate reasons for the conclusions he reached. The judge failed to engage with the background material that suggested that there were systematic failings in the system in Mongolia and the protection provided to women. He failed to engage with the material that suggested that domestic violence was not criminalised and that police and the government were reluctant to get involved. She submitted that the fact that the Appellant was educated and resourceful was irrelevant as the systems failings applied to everyone. In relation to ground 2 she suggested that the Appellant could not relocate as her husband could find her and had given three specific methods by which her husband could trace her if she relocated. She also argued that it would be unduly harsh for the Appellant to relocate as the majority of the country was uninhabitable and her and her eldest child had mental health issues.
9. Ms Johnstone pointed to paragraphs 29, 30, 33, 34 and 36 as evidence of the fact that the Judge had engaged with the material before him. The Judge had made a finding at paragraph 33 that was unchallenged in the grounds that there was no evidence that the Appellant's husband intended to harm the children. The Judge had highlighted the fact that the Appellant chose not to divorce her husband.
10. In response said that nowhere was it clear that the Judge had assessed the expert report.

Error of Law

11. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
12. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1): "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.*"

13. The grounds of appeal to the Upper Tribunal content that the First-tier Tribunal Judge erred in two respects. It is firstly contended that the Judge failed to engage with the background material including the expert report about sufficiency of protection in Mongolia for victims of domestic violence.
14. The Judge set out in detail at paragraphs 6(1)-(14) and 7 (1) - (9) the documentary evidence that was placed before him which included the experts report. He pointed out that the material ran to some 117 pages not all of which was directly relevant to the Appellant's case so he sought further clarification as to those passages that were more directly relevant (paragraph 8). The Judge set out in detail the Appellant's claim at paragraph 10(i)-(xxix) and the submissions of the advocates devoting paragraphs 15-18 to the submissions made by Ms Smith which relied heavily on the background material.
15. In his findings the Judge pithily summarised the argument advanced by Ms Smith at paragraph 30:

"What Ms Smith, and the expert's reports, claim however is that whilst the letter of the law provides a sufficiency of protection, in practice this protection is inadequate."
16. The Judge accepted on the basis of the material before him that there were shortcomings in the system in Mongolia (paragraph 31) but he was entitled to consider this against the evidence of what actually occurred in the Appellant's case. In determining whether there were systematic failings in the system in Mongolia and therefore insufficiency of protection the Judge was entitled to take into account how the authorities had responded on what was accepted as the only occasion that the Appellant made a complaint to the police that she had been assaulted and whether this demonstrated an unwillingness by the authorities to act. He found that the police took action and while this may have fallen short of what *she* wanted the fact is that her husband was detained and fined. (paragraph 34)
17. The Judge in determining whether the protection offered was sufficient was entitled to take into account that the Appellant took no other steps either to bring her husband to the attention of the authorities although she had no reason to believe they would not respond as they had in her case; she took no steps either in Mongolia or the United Kingdom to divorce her husband and indeed reconciled with him on a number of occasions in Mongolia, Russia and the United Kingdom.
18. While the Judge accepted that the Appellant had been a victim of domestic violence the Judge, having heard evidence from the Appellant and considered what was in her witness statements, was entitled to find as he did (paragraph 36) that her claims to be in fear for her life had to be set against her statements that she would not be able to achieve such a good standard of living in Mongolia as she enjoyed in the United Kingdom or indeed find a comparable education system for her children and that this fact rather than fear of her husband underpinned her claim for asylum protection (paragraph 36).
19. I am therefore satisfied that the Judges findings when read as a whole deal adequately with the issue of protection.

20. The second ground argues that the Judge failed to deal with the issue of internal relocation adequately. The Judge deals with this at paragraph 37 of his decision and while suggesting that the Appellant could relocate found that in fact her failure to divorce her husband raised concerns in his mind as to whether she intended to reconcile with him again in any event as divorce would afford her the same level of protection as any other Mongolian citizen who was a victim of crime. Nevertheless given his finding that there was adequacy of protection in Mongolia I am satisfied that any shortcomings in his assessment of the issue of internal relocation in relation to whether her husband could find her again would have made no material outcome to the decision.
21. I find therefore that the reasons given were adequate and the Appellant cannot be in any doubt about why the appeal was dismissed.

CONCLUSION

22. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

23. **The appeal is dismissed.**

Signed

Date 24.3.2015

Deputy Upper Tribunal Judge Birrell